

NAFR

HIGH COURT OF CHHATTISGARH, BILASPUR**FAM No. 63 of 2014**

- Santosh Singh S/o Akshay Singh Aged About 40 years R/O Village- Kedarpur, P.S. and Tah. Ambikapur, Distt. Surguja C.G.

---- Appellant**Versus**

- Smt. Seema Singh W/o Santosh Singh Aged About 34 Years R/O Vishrampur, P.S. Vishrampur, Distt. Surajpur C.G.

---- Respondent

For appellant	: Mr. Sunil Tripathi, Advocate
For Respondent	: Ms. Priyanka Mehta, Advocate

Hon'ble Shri Justice Chandra Bhushan Bajpai**Order On Board****31/03/2015**

1. By this appeal, the appellant has challenged the legality and propriety of the judgment and decree dated 16-5-2014 passed by the 1st Additional Distt. Judge, Surajpur in Civil Suit No. 44-A/2010 whereby and whereunder learned Court below has allowed the petition under Section 13 of the Hindu Marriage Act (in brevity 'Act') filed by the respondent for dissolution of marriage by a decree of divorce and also directed the appellant to return Stridhan, golden chain, four golden bangles, one gold Mangalsutra, four ear tops, chain of children, locket, Kanauti and six pairs of silver payal within two months, also to pay Rs. 1,50,000/- (Rs. One lac fifty thousand) towards permanent alimony within six months from the date of judgment.

2. As per the suit filed by the respondent, both parties are legally wedded husband and wife. Their marriage was solemnized on 16-4-2000. After subsequent incidents, respondent filed an application under Section 13 of the Act for dissolution of marriage by a decree of divorce and also prayed that Rs. 1,000/- per month as maintenance be awarded to her and ornaments mentioned in schedule-A be also

returned by the appellant. Respondent also prayed for Rs. 5,000/- per month towards maintenance of her only son Aditya alias Vishal.

3. The appellant filed written statement before the trial Court, denied the entire pleading given in the plaint and submitted that to harass the appellant the respondent has filed the petition for divorce without any valid reason. She has deserted the appellant, she is running a private school and earning Rs. 30,000/-. Hence the petition for dissolution of marriage by a decree of divorce be dismissed as not maintainable.

4. Trial Court during trial framed issues and conducted trial. Respondent examined herself and her witnesses Sumit Singh and the appellant examined himself before the trial Court.

5. After providing opportunity of hearing to both the parties, learned trial Court held that as per evidence adduced by both the parties, they are living separately for last more than 2 years and respondent is liable to get a decree of divorce from the appellant. For other issues, after appreciating the entire evidence, trial Court awarded Rs. 1,50,000/- towards permanent alimony and also held that within two months from the date of judgment and decree, the respondent shall return stridhan above-mentioned to the respondent.

6. The appellant by filing memorandum of appeal has challenged permanent alimony and return of stridhan and submitted that as the respondent is still getting maintenance allowance from the appellant by order of Judicial Magistrate First Class, Surajpur hence permanent alimony should not be given to the respondent. It is further submitted that maintenance and permanent alimony may not be ordered together and in absence of specific pleading of particulars of articles, the Court cannot compel either of the parties where parties are agreed to take divorce mutually, to fulfill further terms and conditions. Hence the judgment is against law. The appellant submits that award for permanent alimony and return of stridhan is perverse, illegal and deserves to be set aside. The appellant prayed that the

appeal be allowed and sub-para 2 and 3 of para 30 of the impugned judgment be set aside. The appellant has not challenged the decree of divorce and dissolution of marriage between the parties.

7. I have heard learned counsel for the parties and perused the evidence available on record and judgment and decree of the trial Court.

8. Learned counsel for the appellant vehemently argued that there is no evidence adduced as to when the articles were purchased, what was their value. Schedule-A is not made part of the judgment and decree. No weight and other specification was given for those stridhan. The trial Court ordered merely on the basis of presumption as held in para 29 of the judgment which is not proper for awarding permanent alimony. Status of the parties and other connected aspects has be taken into consideration. Without any foundation of facts the trial Court has awarded permanent alimony.

9. Learned counsel also placed reliance in the judgment of **Dinesh Kumar Rathore -v- Smt. Swarnlata Rathore** reported in **2002(4) CGLJ 365 (DB)** where the Division Bench of this Court held that family judge while awarding the decree of divorce and dissolution of marriage also directed to pay Rs. 4 lac without any pleading, issue and evidence. The Division Bench held that the Family Judge shall allow amendment, shall frame issues and allow the parties to lead evidence in the light of requirement contained in Section 25 of the Act. Order awarding permanent alimony was set aside and the case was remanded for the same. Learned counsel submits that in the present case no pleading is incorporated in the written statement. The respondents filed a separate application under Section 25 of the Act for which the trial Court made the order dated 12-12-20012 by disposing the said application. Prayer made in the application under Section 25 of the Act for return of stridhan may be disposed of while appreciating the merits of the case at the time of final disposal. Learned counsel submits that there is no description specifically for the value, weight and other facts regarding place, date of purchase. While allowing permanent alimony status of the parties and other facts are not

considered. The present case is liable for remand for further evidence and for passing the judgment and decree afresh.

10. Per contra, learned counsel for the respondent opposed the appeal, the grounds taken, argument advanced on behalf of the appellant and submitted that as the appellant failed to prove that the respondent is running private school earning Rs. 30,000/-, hence no consent is needed for permanent alimony. The trial Court rightly passed the judgment and decree for permanent alimony and for return of stridhan. As the respondent duly submitted schedule-A regarding description and other fact of Stridhan, there is no need to elaborate the order for the price of such gold ornaments and regarding other facts for purchase etc.

11. She placed reliance on for **Smt. Rajkumari -v- Sonu Vishwakarma** reported in **2014(5) MPHT 64 (DB)** where division bench of High Court of MP Gwalior bench held that allegation of pregnancy on the date of marriage was not proved beyond doubt. Counter allegation made by appellant/wife as regards demand of dowry etc. could not be proved, even then the trial Court rightly granted decree of divorce particularly on the ground of irretrievable break down and one time alimony of Rs. 3 lacs were granted to appellant wife. The judgment of the trial Court was upheld and decree was maintained subject to certain conditions. Learned counsel for the respondent prays that as this case is similar to the cited case law, no other inquiry or evidence is required to be adduced for grant of permanent alimony. Hence the appeal filed for limited purpose may be dismissed.

12. In order to appreciate the arguments advanced on behalf of the parties, I have perused the evidence adduced by the parties.

13. By filing this appeal, the appellant has not challenged dissolution of marriage by a decree of divorce. The appellant has challenged the judgment and decree only for the limited ground i.e. sub-para 2 and 3 of para 30 of the same regarding return of stridhan and permanent alimony of Rs. 1,50,000/- to respondent.

14. Learned trial Court failed to ascertain the value of stridhan or other connected facts which are required for execution of the decree. The trial Court said nothing regarding schedule-A, may be or may not be part of the judgment and decree. Therefore, it requires reconsideration as sub-para 3 of para 30 of the judgment may not be adequately executed in absence of specific mention of those gold or silver ornaments, their particulars etc. So far as permanent alimony of Rs. 1,50,000/- is concerned, the trial Court discussed while deciding Issue No. 2 but as per para 27 of the judgment, no reason for awarding permanent alimony was given.

15. The case law cited by learned counsel for the respondent is based on different facts and not of any help for the respondent as it is the duty of the trial Court to hold the basis and calculation by which the amount ordered to be given as permanent alimony be assessed. Only because the decree of divorce is passed the respondent is not entitled for permanent alimony and maintenance. Trial Court has to pass a reasoned order for fixing the amount.

16. As held in **Dinesh Kumar Rathore** (supra) in order to determine permanent alimony or maintenance, parties are required to plead and prove income of the spouse. In the present case the basis of awarding Rs. 1,50,000/- as permanent alimony is not given while deciding issue No. 2. As per provisions of Section 25 of the Act, any Court at the time of passing of any decree or at any time subsequent thereto on application made to it for the purpose may order for permanent alimony and maintenance. Though the issue no. 2 was framed for the same but on account of basis of finding it may not be held to have been decided properly. The appellant has not challenged the finding regarding issues No. 1 and 3. The appellant has challenged the finding regarding Issue No. 2 and 4 only. As held in **Dinesh Kumar Rathore** (supra) and also on the basis of the material available on record, it would be appropriate to allow the prayer made by the appellant regarding an opportunity to adduce evidence if any for issue No. 2 and 4 and thereafter to dispose of the matter afresh. Judgment and decree of the trial Court requires limited interference

and remand for the same.

17. Consequently the appeal filed for limited purpose by the appellant is hereby allowed to the extent that relief given in para 30 sub para 2 and 3 of the judgment is hereby set aside as not maintainable. Case is remanded back to the trial Court. Parties are directed to appear before the trial Court for further hearing on 30-4-2015 either in person or through their counsel. The trial Court is directed to provide opportunity of adducing evidence to both the parties regarding Issue No. 2 and 4 and thereafter pass the order afresh for the limited purpose.

18. It is directed that if the appellant has deposited the amount as directed by this Court vide order dated 22-1-2015 and the respondent has received the same, the trial Court shall obtain a surety for the same from the respondent. If the amount is not withdrawn by the respondent till receipt / production of this order before the trial Court, the same shall not been disbursed to her and be kept deposited which shall be subject to the judgment and decree passed afresh as directed above.

19. Parties shall bear their own costs.

20. Appeal is allowed to the above extent.

Sd/-

Chandra Bhushan Bajpai
Judge